

banks profit from overdraft protection whether or not the program itself is advertised. This is because profits are made from customer usage, whether the usage is planned or purely inadvertent. Not surprisingly, banks are pairing their overdraft protection programs with accounts that have strong consumer appeal, such as the so-called free checking accounts.

The Fed's recent revisions to Regulation DD and its related staff commentary were intended to rein in deceptive advertising of overdraft programs but had the perverse effect of creating an incentive to further hide the program from consumers. This is because the reforms mandated by the final rule, including the need to disclose the total monthly and annual overdraft fees incurred by the individual customer, are triggered only if the consumer is told about the program in advance. So long as a bank does not advertise the overdraft feature, the bank can fully promote its transaction accounts as being "free" and, just as perniciously, can avoid showing the total monthly and annual costs of overdraft fees in the periodic statement. Thus, the Fed's new rules that become effective in July 2006 will, in effect, create a safe harbor for banks to legally entrap customers.

H.R. 3449 would close this loophole and further prevent other deceptive marketing practices by prohibiting: advertisements of an account as "free" or "no cost" if the account includes overdraft protection; the marketing of overdraft protection as a short-term credit service; statements that the bank will cover any and all overdrafts if the bank, in fact, reserves the right not to do so; and statements that a negative account balance may be maintained, if the consumer, in fact, has to promptly cover the overdraft.

The bank regulators should make these prohibitions effective by regulation.

#### IV. ATM MACHINES DO NOT ALWAYS DISTINGUISH BETWEEN ACTUAL ACCOUNT BALANCES AND OVERDRAFT PROTECTION AMOUNTS

Customers are vulnerable to overdraft fees when accessing their funds from ATMs. While there are guidelines constraining this practice, banks have not been required to provide any sort of warning that a requested withdrawal would result in an overdraft of the customer's account. Some banks have gone well beyond relying upon a customer's ignorance of their actual balance, intentionally causing their customers to believe they have more funds in their accounts than actually is the case. For example, there are instances where banks have programmed their ATMs to show the actual account balance plus the available overdraft coverage as the balance available to the customer. This trick causes customers, particularly those with the lowest balances and who probably are the most financially vulnerable, to inadvertently overdraft their accounts and incur one or more overdraft fees.

H.R. 3449 would ensure that consumers who may overdraft their accounts at an ATM are given a chance to avoid overdrafting their accounts by requiring banks: to inform the consumer that a requested transaction will result in a specified overdraft fee, and to give the consumer an opportunity to cancel the requested transaction; and to disclose only the actual dollar balance in the account in response to a balance inquiry.

The bank regulators should adopt either the requirements of the H.R. 3449 or their own guidelines as effective regulations.

#### V. OVERDRAFT PROTECTION FOR DEBIT CARDS MAY CONSTITUTE THE LARGEST ABUSE AND SHOULD BE RESTRICTED

The ordinary consumer probably writes far fewer checks and makes far fewer cash withdrawals from ATMs per month than the

number of times he or she uses a debit card, for a debit card is often used daily and frequently.

In one day, for example, a debit card might be used for breakfast, lunch or dinner; at a grocery store, the cleaners, the gas station, the book store, the florist shop, the movies, etc. If overdraft fees were applicable, at \$30.00 per overdraft, nine transactions would incur \$270.00 in fees in one day.

Further, unlike checking accounts or ATMs, there is little likelihood of keeping an accurate account of one's cash balance. Hence, the potential for large overdraft fees from the use of debit cards is enormous.

There is no known data on this, for the regulators do not collect data. However, anecdotal information indicates that overdraft programs attached to debit cards may well be the most profitable source of fee income for banks, and the program that most preys upon consumers.

H.R. 3449 falls short here. It simply calls for the Fed to study the feasibility of informing customers of a potential overdraft, but study is not needed to tell us that strong regulation in this area would result in vendors developing practical and cost-effective solutions.

The bank regulators should either prohibit overdraft protection programs in connection with point of sale debit cards, or restrict the number of overdrafts to one per billing cycle with immediate and appropriate notification upon that single event.

#### VI. MANY BANKS AND BANK VENDORS MANIPULATE PAYMENT PROCESSING TO MAXIMIZE FEE INCOME

Many and perhaps most banks have programmed their computers to process customer payments in a manner designed to maximize overdraft fees; i.e., post the largest transaction first. In fact, many vendors' contracts often take a smaller percentage of each overdraft charge, provided the bank will pay the largest checks first, and then base their compensation on the amount of increase in fee income. This is all the more offensive given that, with overdraft protection, no checks get bounced, so processing the largest checks first is simply price gouging. To date, only the OTS has called for an end to this practice.

H.R. 3449 ensures that banks do not manipulate transaction processing in order to maximize the number of overdraft fees imposed on consumers, prohibiting both the delay of the posting of the deposits in an account and the posting of checks in an order designed to trigger one or more overdrafts.

The regulators should examine the contracts between the banks and the vendors to determine whether the compensation is based upon a percentage increase in fee income and whether the vendors are agreeing to take a reduction in their per overdraft compensation if the banks will permit them to manipulate the posting of checks to increase the number of overdrafts charged.

The bank regulators should adopt the provisions of H.R. 3449 by regulation, and should prohibit contracts between banks and vendors containing compensation provisions based upon increases in fee income. Those practices are unsafe, unsound, unfair, and deceptive.

#### VII. THE FEDERAL REGULATORS PUBLISHED AN EXCELLENT AND LITTLE KNOWN PAMPHLET DEALING WITH OVERDRAFT FEES THAT SHOULD BE ACTED UPON

A pamphlet virtually unknown to consumers, entitled "Protecting Yourself from Overdraft and Bounced-Check Fees," and published by the five Federal regulators, states that there are "other ways of covering overdrafts that may be less expensive."

First, very few customers know this. Second, most banks do not want their customers

to know this or to choose a less expensive option (that is why it is usually only the "most expensive" option that is made automatic). Third, in my experience, few bank tellers or bank managers are aware of the various options, or of the fees associated with each option.

H.R. 3449 calls upon the Fed to study the feasibility of consumer surveys and market testing programs.

I believe the bank regulators should simply engage in a "mystery shopping" program to establish the knowledge (or lack thereof) of bank personnel and to observe their actual practices. Once the agency does this, it will better understand the imperative to require a bank, upon account opening, to disclose the various options and fees, and have the customer select and consent to the option of their choice.

#### VIII. CONCLUSION

H.R. 3449 succinctly highlights the major problems with overdraft protection programs. Nothing here, however, requires a legislative solution. I urge the regulators, therefore, to take the lead by implementing regulatory solutions, as articulated above, and that incorporate many of the provisions of H.R. 3449.

Further, much can be done to reshape the industry by enforcing even the limited existing rules and regulations. Strong enforcement actions against the more egregious actors could set the tone for more responsible overdraft programs. So far, the OCC is the only agency to bring an "unfair and deceptive" action against any bank; I encourage every regulator to use this tool where appropriate.

#### HONORING THE REDBUD FAMILY HEALTH CLINIC IN CLEARLAKE, CALIFORNIA

##### HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 24, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize the grand opening of the Redbud Family Health Center in Clearlake, CA on Sunday, October 23, 2005.

The Redbud Family Health Center is affiliated with the local Adventist Health Redbud Community Hospital. This new state-of-the-art 33,400 square foot facility located in the City of Clearlake provides services such as primary care medicine, dental services, pediatric services, a behavioral health program, obstetric and women's health services, general surgery, orthopedic surgery, cardiac testing services, and cardiac and pulmonary rehabilitation services. There is also a privately owned on-site pharmacy.

Mr. Speaker, each month this center provides superior medical attention to 4,500 residents of rural Lake County. Last year alone, the Redbud Family Health Center cared for 50,400 patients.

The Redbud Family Health Center has taken a leading role in organizing numerous public outreach events such as blood drives, free health screenings, and an Annual Health and Safety Fair which I am proud to co-sponsor each fall. Over \$14 million in free and low cost services have been contributed to the community. These are only a few examples of the Redbud Family Health Center's commitment to enhancing the quality of life for all Lake County citizens.

Mr. Speaker and colleagues, it is appropriate that we recognize the grand opening of the Redbud Family Health Center, as it will play a vital role in continuing the tradition of a healthier and happier community in Lake County, CA.

#### SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, October 25, 2005 may be found in the Daily Digest of today's RECORD.

#### MEETINGS SCHEDULED

##### OCTOBER 26

- 9 a.m.  
Judiciary  
To hold hearings to examine the Streamlined Procedures Act relating to Habeas Reform.  
SD-226
- 9:30 a.m.  
Environment and Public Works  
Business meeting to consider S. 1772, to streamline the refinery permitting process, S. 1869, to reauthorize the Coastal Barrier Resources Act, and S. Res. 255, recognizing the achievements of the United States Fish and Wildlife Service and the Waterfowl Population Survey.  
SD-406
- 10:30 a.m.  
Judiciary  
Terrorism, Technology and Homeland Security Subcommittee  
To hold hearings to examine emergency preparedness relating to terrorism.  
SD-226
- 2 p.m.  
Budget  
Business meeting to markup the proposed Deficit Reduction Omnibus Reconciliation Act of 2005.  
SD-608
- Energy and Natural Resources  
Public Lands and Forests Subcommittee  
To hold hearings to examine the implementation of the Federal Lands Recreation Enhancement Act (P.L. 108-447), by the Forest Service and the Department of the Interior.  
SD-366
- 2:30 p.m.  
Environment and Public Works  
To resume hearings to examine Eco-terrorism specifically examining Stop Huntingdon Animal Cruelty.  
SD-406

Homeland Security and Governmental Affairs  
Federal Financial Management, Government Information, and International Security Subcommittee  
To hold hearings to examine the tax gap, focusing on components that make up the tax gap and how to ensure that American taxpayers are not bearing the financial burden of those who are not complying with the law.  
SD-342

Foreign Relations  
To hold hearings to examine the nomination of James Caldwell Cason, of Florida, to be Ambassador to the Republic of Paraguay.  
SD-419

Judiciary  
Administrative Oversight and the Courts Subcommittee  
To hold hearings to examine proposals to split the Ninth Circuit.  
SD-226

Intelligence  
To receive a closed briefing regarding certain intelligence matters.  
SH-219

##### OCTOBER 27

9:30 a.m.  
Indian Affairs  
Business meeting to consider S. 1057, to amend the Indian Health Care Improvement Act to revise and extend that Act, S. 1003, to amend the Act of December 22, 1974, S. 692, to provide for the conveyance of certain public land in northwestern New Mexico by resolving a dispute associated with coal preference right lease interests on the land, a proposed bill to extend the statute of limitations for breach of trust claims, and S. 1219, to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc.  
SR-485

Judiciary  
Business meeting to consider pending calendar business.  
SD-226

10 a.m.  
Banking, Housing, and Urban Affairs  
To hold hearings to examine issues regarding the sending of remittances and the role of financial institutions.  
SD-538

Energy and Natural Resources  
To hold hearings to examine Administration's response to hurricane recovery efforts related to energy and to discuss energy policy.  
SH-216

Agriculture, Nutrition, and Forestry  
Forestry, Conservation, and Rural Revitalization Subcommittee  
To hold an oversight hearing to examine the Forest and Rangeland Research Program of the USDA Forest Service.  
SR-328A

2 p.m.  
Finance  
International Trade Subcommittee  
To hold hearings to examine the status of World Trade Organization negotiations.  
SD-215

Veterans' Affairs  
To hold hearings to examine the rising number of disabled veterans deemed unemployable relating to the VA's individual unemployment benefit.  
SR-418

2:30 p.m.  
Foreign Relations  
African Affairs Subcommittee  
To hold hearings to examine cross-continental progress relating to African organizations and institutions.  
SD-419

Intelligence  
To receive a closed briefing regarding certain intelligence matters.  
SH-219

##### OCTOBER 31

1 p.m.  
Homeland Security and Governmental Affairs  
Investigations Subcommittee  
To hold hearings to examine reaching a consensus on United Nations reform regarding corruption in the United Nations Oil-for-Food program, including the oversight by the U.S. Office of Foreign Assets Control to stop misconduct by U.S. persons doing business under the Oil-for-Food program.  
SD-342

##### NOVEMBER 1

10 a.m.  
Energy and Natural Resources  
National Parks Subcommittee  
To hold hearings to examine the National Park Service's Draft Management Policies, including potential impact of the policies on park operations, park resources, interaction with gateway communities, and solicitation and collection of donations.  
SD-366

2:30 p.m.  
Judiciary  
To hold hearings to examine pending nominations.  
SD-226

##### NOVEMBER 2

9:30 a.m.  
Indian Affairs  
To hold an oversight hearing to examine In Re Tribal Lobbying Matters, Et Al.  
Room to be announced

2 p.m.  
Energy and Natural Resources  
Public Lands and Forests Subcommittee  
To hold hearings to examine S. 1541, to protect, conserve, and restore public land administered by the Department of the Interior or the Forest Service and adjacent land through cooperative cost-shared grants to control and mitigate the spread of invasive species, S. 1548, to provide for the conveyance of certain Forest Service land to the city of Coffman Cove, Alaska, S. 1552, to amend Public Law 97-435 to extend the authorization for the Secretary of the Interior to release certain conditions contained in a patent concerning certain land conveyed by the United States to Eastern Washington University until December 31, 2009, and H.R. 482, to provide for a land exchange involving Federal lands in the Lincoln National Forest in the State of New Mexico.  
SD-366

##### NOVEMBER 3

10 a.m.  
Energy and Natural Resources  
To hold hearings to examine a status report on the Environmental Protection Management programs of the Department of Energy.  
SD-366